

HOUSTON ARMATURE WORKS INC.
GENERAL TERMS AND CONDITIONS OF SALE

1. Definitions. As used herein, the following terms shall have the respective meanings set forth in this Section 1: (a) “**Buyer**” means the person or entity named as the buyer or purchaser on the face of the Purchase Order; (b) “**Goods**” means the particular products to be sold to Buyer by Seller, as described in the Purchase Order; (c) “**Overriding T&Cs**” means a written set of general terms and conditions (other than these Terms and Conditions) negotiated between Buyer and Seller and executed by: (i) a duly authorized representative of Buyer; and (ii) the President or a Vice President of Seller; (d) “**Purchase Order**” means a written purchase order for Goods issued by Buyer and thereafter accepted by Seller in writing; (e) “**Seller**” means Houston Armature Works Inc., a Texas corporation; and (f) “**Terms and Conditions**” means these General Terms and Conditions of Sale.

2. Applicability of General Terms and Conditions. Subject to the last sentence of this Section 2: (a) these Terms and Conditions, together with the general description of the Goods contained in the Purchase Order, form the entirety of the contract between Buyer and Seller with respect to the purchase and sale of the Goods, and supersede all other communications, negotiations and prior oral or written statements regarding the subject matter hereof and thereof; (b) Seller’s acceptance of Buyer’s order for the Goods is expressly limited to and conditioned upon the terms and conditions set forth in these Terms and Conditions; (c) any terms and conditions contained in the Purchase Order or in any prior written or oral communication between Buyer and Seller which are different from or in addition to the terms and conditions set forth in these Terms and Conditions are hereby rejected and shall not be binding upon Seller under any circumstances; (d) Buyer will be deemed to have assented to all of the terms and conditions set forth in these Terms and Conditions upon the earlier of: (i) Buyer’s issuance of the Purchase Order; (ii) Buyer’s acceptance of the Goods to be provided hereunder; or (iii) the presentation of an invoice to Buyer in connection with the Goods to be provided hereunder; (e) in the event of any conflict or inconsistency between any term or provision of these Terms and Conditions and any term or provision of the Purchase Order, these Terms and Conditions shall govern; (f) no change, modification, rescission or discharge of these Terms and Conditions shall be binding upon Seller unless made in writing and signed on its behalf by the President or a Vice President of Seller; (g) no modification or additional terms shall be applicable to these Terms and Conditions (or the Purchase Order) as a result of Seller’s receipt, acknowledgment, or acceptance of purchase orders, shipping instruction forms, or other documentation containing terms at variance with or in addition to those set forth herein; and (h) any such modifications or additional terms are specifically rejected and deemed a material alteration hereof. Notwithstanding anything herein to the contrary, if Buyer and Seller have executed a standard set of Overriding T&Cs, the terms contained in such Overriding T&Cs shall prevail to the extent there is a conflict between such Overriding T&Cs and these Terms and Conditions.

3. Prices. Unless otherwise expressly set forth in the Purchase Order, all prices set forth in the Purchase Order are exclusive of taxes, transportation and insurance, which are to be borne by Buyer.

4. Taxes. Any current or future tax or governmental charge (or increase in same) affecting Seller’s costs of production, sale, or delivery or shipment, or which Seller is otherwise required to pay or collect in connection with the sale, purchase, delivery, storage, processing, use or consumption of the Goods, shall be for Buyer’s account and shall be added to the price or billed to Buyer separately, at Seller’s election.

5. Terms of Payment. All orders are subject to credit approval by Seller. Seller’s standard terms are net 30 days from the date of Seller’s invoice; provided, however, Seller reserves the right, at any time during Seller’s performance of the Purchase Order, in its sole discretion, to require: (a) payment in advance; (b) payment upon delivery; or (c) progress payments. Seller shall have the right, among other remedies, either to terminate the Purchase Order or to suspend further performance under the Purchase Order (and any other purchase orders with Buyer) in the event Buyer fails to make any payment when due. Buyer shall be liable for all expenses, including attorneys’ fees, relating to the collection of past due amounts. If any payment owed to Seller is not paid when due, it shall bear interest, from the date on which it is due until it is paid, at a rate equal to the lesser of: (y) one and one half percent (1.5%) per month; or (z) the maximum rate permitted by applicable law. Nothing contained herein shall be construed as authorizing Buyer to delay or withhold any payment(s) beyond the due date for any Goods sold under the provisions of the Purchase Order. It is expressly understood that all claims on the part of Buyer or any other party are separate and shall have no bearing on the obligation of Buyer to make full and timely payment(s) for all Goods.

6. Shipment and Delivery; Risk of Loss and Legal Title.

(a) While Seller will use all reasonable commercial efforts to maintain the delivery date(s) identified in the Purchase Order, all shipping dates are approximate and not guaranteed. Seller reserves the right to make partial shipments. Seller, at its option, shall not be bound to tender delivery of any goods for which Buyer has not provided shipping instructions and other required information. If the shipment of any Goods is postponed or delayed by Buyer for any reason, Buyer agrees to reimburse Seller for any and all storage costs and other additional expenses resulting therefrom.

(b) Unless otherwise expressly set forth in the Purchase Order, risk of loss and legal title to the Goods shall transfer to Buyer upon delivery to and receipt by carrier at Seller’s shipping point. All shipments are F.O.B. Seller’s shipping point. Any claims for shortages or damages suffered in transit are the responsibility of Buyer and shall be submitted by Buyer directly to the carrier. Shortages or damages must be identified and signed for at the time of delivery.

7. Limited Warranty.

(a) Subject to the limitations of Section 8, Seller warrants that all Goods manufactured by Seller will be free from defects in material and workmanship and meet Seller’s published specifications at the time of shipment under normal use and regular service and maintenance for a period of one year from the date of shipment of the Goods by Seller. Products purchased by Seller from a third party for resale to Buyer shall carry only the warranty extended by the original manufacturer. **THE WARRANTY SET FORTH IN THIS SECTION 7 AND THE WARRANTY SET FORTH IN SECTION 9 ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY SELLER WITH RESPECT TO ANY GOODS AND ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, EACH OF WHICH IS HEREBY DISCLAIMED, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHETHER OR NOT THE PURPOSE OR**

USE HAS BEEN DISCLOSED TO SELLER IN SPECIFICATIONS, DRAWINGS OR OTHERWISE, AND WHETHER OR NOT ANY GOODS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED BY SELLER FOR BUYER'S USE OR PURPOSE.

(b) This warranty does not extend to any losses or damages due to misuse, accident, abuse, neglect, normal wear and tear, negligence (other than Seller's), unauthorized modification or alteration, use beyond rated capacity, unsuitable power sources or environmental conditions, improper installation, repair, handling, maintenance or application or any other cause not the fault of Seller.

(c) To the extent that Seller has been provided by Buyer (or by Buyer's agents or representatives) with any specifications, description of operating conditions or other data and information in connection with the selection or design of the Goods and/or the preparation of Seller's quotation, and the actual operating conditions or other circumstances differ from those provided by Buyer, any warranties or other provisions contained herein which are affected by such conditions shall be null and void.

(d) If Buyer notifies Seller of any warranty defect with respect to any Goods prior to the expiration of the warranty period set forth in Section 7(a), Seller shall, at its option and as Buyer's exclusive remedy, repair, correct or replace F.O.B. point of manufacture, or refund the purchase price for, that portion of the Goods found by Seller to be defective. Failure by Buyer to give such written notice within the applicable time period shall be deemed an absolute and unconditional waiver of Buyer's claim for such defects. Goods repaired or replaced shall be covered by the foregoing warranty for the remainder of the original warranty period or 90 days from the date of shipment, whichever is longer.

(e) Buyer assumes all other responsibility for any loss, damage, or injury to persons or property arising out of, connected with, or resulting from the use of Goods, either alone or in combination with other products/components.

8. Limitation of Remedy and Liability.

(a) THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER (OTHER THAN THE WARRANTY PROVIDED UNDER SECTION 9) SHALL BE LIMITED TO REPAIR, CORRECTION OR REPLACEMENT OF THE DEFECTIVE GOODS, OR REFUND OF THE PURCHASE PRICE THEREFOR AS PROVIDED IN SECTION 7.

(b) SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE AND THE REMEDIES OF BUYER SET FORTH IN THESE TERMS AND CONDITIONS ARE EXCLUSIVE. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXCEED THE PRICE PAID BY BUYER FOR THE SPECIFIC GOODS SUPPLIED BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION.

(c) BUYER AGREES THAT IN NO EVENT SHALL SELLER'S LIABILITY TO BUYER EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, business interruption, loss of use, revenue, reputation and data, costs incurred, including without limitation, for capital, fuel, power and loss or damage to property or equipment.

(d) It is expressly understood that any technical advice furnished by Seller with respect to the use of the Goods is given without charge, and Seller assumes no obligation or liability for the advice given, or results obtained, all such advice being given and accepted at Buyer's risk.

(e) BUYER AND SELLER AGREE THAT THE EXCLUSIONS AND LIMITATIONS SET FORTH IN THIS SECTION 8 ARE SEPARATE AND INDEPENDENT FROM ANY REMEDIES WHICH BUYER MAY HAVE HEREUNDER AND SHALL BE GIVEN FULL FORCE AND EFFECT WHETHER OR NOT ANY OR ALL SUCH REMEDIES SHALL BE DEEMED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

9. Patents and Copyrights. Subject to the limitations set forth in Section 8(b), Seller warrants that, except as are made specifically for Buyer according to Buyer's specifications, the Goods do not infringe any valid U.S. patent or copyright in existence as of the date of shipment. Seller's warranty under this Section 9 is given upon the condition that Buyer promptly notifies Seller of any claim or suit involving Buyer in which such infringement is alleged and cooperate fully with Seller and permit Seller to control completely the defense, settlement or compromise of any such allegation of infringement. Seller's warranty under this Section 9 only applies to infringement arising solely out of the inherent operation according to Seller's specifications and instructions of such Goods. In the event any Goods are held to infringe such a U.S. patent or copyright in such suit, and the use of such Goods is enjoined, or in the case of a compromise or settlement by Seller, Seller shall have the right, at its option and expense, to procure for Buyer the right to continue using such Goods, or replace them with non-infringing Goods, or modify same to become non-infringing, or grant Buyer a credit for the depreciated value of such Goods and accept return of them. In the event of the foregoing, Seller may also, at its option, cancel any other outstanding purchase orders as to future deliveries of similar goods, without liability.

10. Excuse of Performance.

(a) Seller shall not be liable for delays in performance or for non-performance due to: acts of God; acts of Buyer; war; fire; flood; weather; sabotage; strikes or labor disputes; civil disturbances or riots; governmental requests, restrictions, allocations, laws, regulations, orders or actions; unavailability of or delays in transportation; default of suppliers; or unforeseen circumstances or any events or causes beyond Seller's reasonable control. Deliveries or other performance may be suspended for an appropriate period of time or canceled by Seller upon notice to Buyer in the event of any of the foregoing.

(b) If Seller determines that its ability to supply the total demand for the Goods, or to obtain material used directly or indirectly in the manufacture of the Goods, is hindered, limited or made impracticable due to causes set forth in Section 10(a), Seller may allocate its available supply of the Goods or such material (without obligation to acquire other supplies of any such Goods or material) among itself and its purchasers on such basis as Seller determines to be equitable without liability for any failure of performance which may result therefrom.

11. Cancellation. Buyer may cancel the Purchase Order only upon reasonable advance written notice and upon payment to Seller of:

- (a) any cancellation charges set forth in the Purchase Order; or
- (b) if no such cancellation charges are specifically set forth in the Purchase Order, all costs and expenses incurred, and to cover commitments made, by Seller and a reasonable profit thereon. Seller's determination of any cancellation charges under this Section 11(b) shall be conclusive and binding upon Buyer.
12. Changes. Buyer may request changes or additions to the Goods consistent with Seller's specifications and criteria; provided, however, no such changes or additions will be binding unless accepted in writing by Seller (and then only to the extent so accepted by Seller in such writing). In the event any changes or additions are accepted by Seller, Seller may revise the price and dates of delivery. Seller reserves the right to change designs and specifications for any Goods without prior notice to Buyer, except with respect to Goods being made-to-order for Buyer.
13. Nuclear/Medical. GOODS SOLD HEREUNDER ARE NOT FOR USE IN CONNECTION WITH ANY NUCLEAR, MEDICAL, LIFE-SUPPORT AND/OR RELATED APPLICATIONS. Buyer accepts all Goods with the foregoing understanding, agrees to communicate the same in writing to any subsequent purchasers or users and to defend, indemnify and hold harmless Seller from any claims, losses, suits, judgments and damages, including incidental and consequential damages, arising from such use, whether the cause of action be based in tort, contract or otherwise, including allegations that Seller's liability is based on negligence or strict liability.
14. Inspection/Testing. Buyer, at its option and expense, may inspect and observe the testing by Seller of the Goods for compliance with Seller's standard test procedures prior to shipment, which inspection and testing shall be conducted at Seller's plant at such reasonable time as is specified by Seller. Any rejection of the Goods must be made promptly by Buyer before shipment. Tests shall be deemed to be satisfactorily completed and the test fully met when the Goods meet Seller's criteria for such procedures.
15. Drawings. Seller's prints and drawings (including, without limitation, all underlying technology) furnished by Seller to Buyer in connection with the delivery of any Goods are the property of Seller, and Seller retains all rights thereto, including without limitation, exclusive rights of use, licensing and sale. Possession of such prints or drawings does not convey to Buyer any rights or license, and Buyer shall return all copies (in whatever medium) of such prints or drawings to Seller immediately upon request therefor.
16. Miscellaneous.
- (a) Notices. Unless otherwise provided in these Terms and Conditions, all communications, notices, approvals, requests or consents hereunder or under the Purchase Order shall be in writing and shall be deemed to have been duly given: (a) when personally delivered; (b) when sent by facsimile (with written confirmation of receipt), provided that a copy is simultaneously mailed by registered or certified mail, postage prepaid, return receipt requested; or (c) when received by the addressee, if sent by a nationally recognized overnight delivery service; in each case, to the appropriate address or facsimile number, as applicable, set forth in the Purchase Order.
- (b) Independent Contractor. The relationship between Seller and Buyer shall be that of independent contractors only. Nothing in these Terms and Conditions or in the Purchase Order is intended to create, nor shall be deemed to create, any agency, partnership, joint venture or other similar relationship between Seller and Buyer. Neither party shall have the right or authority to act on behalf of the other or represent that it has any such right or authority.
- (c) Assignments; Successors. Buyer may not assign any of its rights or delegate any of its duties or obligations hereunder without the prior consent of Seller. Subject to the preceding sentence, these Terms and Conditions will apply to, be binding in all respects upon, and inure to the benefit of the successors and permitted assigns of Seller and Buyer. Any purported assignment in violation of this Section 16(c) shall be null and void for all purposes.
- (d) Waiver. No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound.
- (e) Severability. If any of the provisions of these Terms and Conditions or the Purchase Order is found by a court of competent jurisdiction to be void or unenforceable, such provision shall be deemed to be deleted herefrom or therefrom, as applicable, and the remaining provisions hereof and thereof shall remain and continue in full force and effect.
- (f) Governing Law and Venue. THESE TERMS AND CONDITIONS AND THE PURCHASE ORDER ARE GOVERNED BY AND WILL BE CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, EXCLUDING ANY CONFLICT OF LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION TO THE LAW OF ANOTHER JURISDICTION. Buyer and Seller agree that the state and federal courts located in Harris County, Texas shall have exclusive jurisdiction with respect to all actions arising in connection herewith, and the parties agree to submit to such jurisdiction.
- (g) Statute of Limitations. To the maximum extent permitted by applicable law, any lawsuit, including, without limitation, for breach of contract and breach of warranty, arising out of the transactions covered by these Terms and Conditions and the Purchase Order must be commenced not later than 12 months from the date the cause of action accrued.